W.P. No. 4163/05
Presented by Shri Sandeep Dubey
dated 19/12/05

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Writ Petition No. 4059 of 2005

Petitioner: State of Chhattisgarh, through the Executive Engineer, Department of PWD Rajnandgaon District Rajnandgaon (CG)

Versus

Respondents: 1. Yashwant Kumar S/o Shri Jailal, aged about 31 years, R/o Ward No. 4 Shanti Nagar, Rajnandgaon (CG)

2. Presiding Officer, Labour Court, Rajnandgaon (CG)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

(37)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 4059 of 2005

Petitioner : State of Chhattisgarh

Versus

Respondents : Yashwant Kumar & another

Shri Sushil Dubey, Govt. Advocate for the petitioner.

Shri H. B. Agarwal, Senior Advocate with Shri Manish Agarwal, Advocate for the respondent No.1.

ORDER

(Passed on this 12th day of December, 2006)

1. According to the petitioner/State the respondent No.1 was appointed as Chowkidar on 1.2.1992 in the Government rest house, Dongargaon on daily wages basis. There was no sanctioned post, even after appointment of the petitioner. Accordingly, chowkidars are appointed in the rest house on daily wages basis. The services of the respondent No.1 was discontinued by order dated 18.8.1996.

2. Being aggrieved a dispute was raised by the respondent No.1. The Labour Court passed the award on 15.3.2005 (Annexure P/1) in Case No. 3/I.D.Act/2002/Reference, directing reinstatement of the respondent No.1 on the post of Chowkidar with 75% back wages.

3. Learned counsel for the petitioner/State does not press the grant of relief of reinstatement on the post of Chowkidar, as the respondent No.1 has already been reinstated pursuant to the award passed by the Labour Court. On the question of back

wages learned counsel appearing for the petitioner submits that the petitioner was admittedly appointed on daily wages basis. The petitioner has no right to the post, as such the petitioner is not entitled for grant of any back wages for the period he remained out of the job and did not work on daily wages as Chowkidar.

4. The respondent No.1 has not made out a case that he was not employed elsewhere gainfully. There was only pleading to that effect that he was not doing anything. Even otherwise, the employee, employed on daily wages basis is not entitled for back wages, as he had not worked on daily wages basis. This Court in the case of **Krishi Upaj Mandi Samiti, Mungeli Vs. Presiding Officer, Labour Court, Bilaspur & another** { 2006 (1) CGLJ 483} has held that *"The daily wages employees are paid wages on the basis of the work performed on day to day basis. There is no question of making any payment of back wages. The daily wages employees are required to be engaged on the basis of availability of work and are paid the wages on that basis. Thus, the impugned award to the extent of grant of back wages is not sustainable in law and the same deserves to be set aside."*

5. Accordingly, this petition is partly allowed to the extent of grant of 75% back wages, holding that the respondent No.1 employee is not entitled to back wages. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur